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## Ways & Means Committee

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### ESSB 5542

**Brief Description:** Establishing special license endorsements for cigar lounges and retail tobacconist shops.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Delvin, Prentice, Honeyford, Hatfield, Schoesler, Hobbs and Hewitt).

**Brief Summary of Engrossed Substitute Bill**

- Creates cigar lounge and retail tobacconist shop endorsements to the tobacco products retailer's license that allow smoking of tobacco products in designated areas.
- Dedicates up to 5 percent of the fees for implementing and enforcing the license endorsements, with the remaining funds provided for tobacco usage prevention and treatment programs.

**Hearing Date:** 5/20/11

**Staff:** Jeff Olsen (786-7175).

**Background:**

Licensing of Cigarette and Tobacco Products Sellers.

Persons selling cigarettes or tobacco products in Washington are required to hold either a wholesaler or retailer cigarette license or a distributor or retailer tobacco products license (for all tobacco products other than cigarettes) through the Department of Licensing's Master License Service (MLS).

The Liquor Control Board (Board) has the authority to approve, deny, suspend, or revoke retail, wholesale, or distributor cigarette and tobacco products licenses. If the Board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing under the Administrative Procedure Act.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Ninety percent of the fees collected for these licenses is deposited in the Youth Tobacco Prevention Account (Account). The remaining 10 percent is deposited in the State General Fund. Funds appropriated from the Account to the Department of Health (DOH) are used for programs related to reducing access to tobacco products by youth. The DOH is also required to enter into interagency agreements to pay the Board for costs related to the enforcement of these requirements. Up to 30 percent of available funds may be used for enforcement.

The Board enforces the tax on tobacco products. The Board's Tobacco Tax Enforcement Unit ensures that people who sell tobacco are properly licensed, have paid the appropriate state taxes, and do not sell tobacco to those under 18 years of age.

#### Smoking in Places of Employment.

In 2005 voters passed Initiative 901, which expanded a ban on smoking in public places to include schools, bars, taverns, bowling alleys, casinos, reception areas, at least 75 percent of the sleeping quarters in hotels and motels, and places of employment. A place of employment includes an area under the control of an employer that employees are required to pass through during the course of employment.

#### **Summary of Bill:**

#### Special Endorsement for Cigar Lounge or Retail Tobacconist Shop.

A tobacco products retailer licensee may apply for a special endorsement as a cigar lounge or a retail tobacconist shop through the MLS. Applicants must pay the appropriate fee and submit an affidavit to the Board certifying certain criteria to obtain the endorsement. The Board determines the form and manner of submission of the affidavit. The Board may request additional documentation or information from an applicant.

Endorsements are effective for the same period as the tobacco products retailer's license. The affidavit, however, must be completed and verified each year by the Board and the appropriate fee paid in full before any endorsement to a tobacco retailer license is issued or renewed. Endorsement decisions must be made by the Board within 21 business days of application. Rejections of an application for an endorsement may be appealed under the same process provided for other licenses issued by the Board.

Language is added to chapter 70.160 RCW (smoking in public places) to state that it does not regulate use or smoking of tobacco products in a place that holds a valid cigar lounge or a retail tobacconist endorsement.

#### Cigar Lounge Endorsement.

An applicant for a cigar lounge endorsement must designate an area for the smoking of tobacco products, that is physically separated from any areas where smoking is prohibited under state law. For the purposes of this requirement, physically separated means an area that is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors.

The applicant must:

- not allow cigarettes to be smoked in the designated area;
- hold a valid spirits, beer, and wine license from the Board;

- have a valid uniform business identifier number; and
- have paid all applicable state business and occupation taxes in the year prior to application for endorsement.

In the year immediately preceding initial application or renewal, the applicant must show that it derived at least \$25,000 of the business' annual gross income from the sale of tobacco products, tobacco product related paraphernalia, and the rental of on-site humidor space. If it is an initial endorsement application, the applicant may use any year prior to the initial application to meet the requirements or must show proof that it has purchased, at wholesale, at least \$12,500 in tobacco products and tobacco products related paraphernalia.

#### Retail Tobacconist Shop Endorsement.

An applicant for a retail tobacconist shop endorsement must be an establishment whose primary purpose is the sale of tobacco products and tobacco product related paraphernalia and that is physically separated from any adjacent location where smoking is prohibited under state law. For the purposes of this requirement, physically separated means an area that is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors.

The applicant must:

- not allow cigarettes to be smoked in the designated area;
- prohibit entry into the designated area to any person under the age of 18;
- have a valid uniform business identifier number; and
- have paid all applicable state business and occupation taxes in the year prior to application for endorsement.

In the year immediately preceding initial application or renewal, the applicant must show that it derived at least 75 percent of the business' annual gross income from the sale of tobacco products and tobacco product related paraphernalia. If it is an initial endorsement application, the applicant may use any year prior to the initial application to meet the requirements or must show proof that it has purchased, at wholesale, at least \$25,000 in tobacco products and tobacco products related paraphernalia.

#### Ventilation Requirements.

In addition, the applicant for a special endorsement must obtain a signed letter from a heating, ventilation, air-conditioning, and refrigeration contractor registered with the Department of Labor and Industries, which certifies that the ventilation and exhaust system for the designated area:

- is separate and distinct from the location's general heating, ventilation, and air-conditioning system;
- has an air flow, as calculated in cubic feet per minute, that provides for at least 13 or more air changes within the space served by the ventilation and exhaust system;
- uses the correct quantity of filters recommended by the manufacturer of the ventilation and exhaust system and that those filters have a minimum efficiency rating value of 14 or higher; and
- uses a loose-fill, rechargeable-type sorbent material positioned across the airflow in such a configuration that gaseous contaminants have a residence time of one-tenth of one second or more within the sorbent material.

Employee Acknowledgement.

Each employee who works in the designated area must sign an acknowledgment that the employee has been advised of and accepts that environmental tobacco smoke may be present in their potential work area. The applicant must maintain the acknowledgment on file.

Signage.

The applicant must post signage indicating that environmental tobacco smoke may be present in the designated area. This signage must be in the form and manner provided by the Board and must be placed in a conspicuous location at each entry to the designated area.

Fees.

To obtain a cigar lounge endorsement, a licensee must pay a \$17,500 fee. The fee for a retail tobacconist shop endorsement is \$6,000. Up to 5 percent of the fees must be deposited into the Liquor Revolving Fund and used by the Board to cover the administrative costs of implementing and enforcing the license endorsements. The remaining funds must be deposited in the Tobacco Prevention and Control Account for tobacco usage prevention and treatment programs.

Retaliation.

No employer may discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee solely for refusing to consent to or sign the acknowledgment required for the endorsements.

Endorsement Caps.

The Board may not allow the total number of cigar lounge endorsements in the state to exceed 100 or the total number of retail tobacconist shop endorsements in the state to exceed 500. The Board must administer the distribution of cigar lounge or retail tobacconist shop endorsements and must ensure that the collective number of endorsements located in all counties with a population of over 500,000 never exceed one-half of the endorsements allowed for each endorsement. Renewing applicants must be given priority over new applicants for endorsements.

**Appropriation:** None.

**Fiscal Note:** Requested on May 18, 2011.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.